S.B. CIVIL WRIT PETITION NO.5525/1993
(Surendra Kumar Vijay Vs. The State of Raj. & Ors.)

DATE OF ORDER : SEPTEMBER 5, 2007

HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.S.N.Trivedi, for the petitioner
Mr.O.P.Boob, Dy.Government Advocate

BY THE COURT

The instant petition has been filed by the petitioner stating therein that petitioner, a teacher in Baba Chhotunath Senior Higher Secondary School, Nokha was commissioned on 2.11.1982 as 3rd Officer in NCC and later on promoted as 2nd Officer on 4.9.1991. Thereafter, he was transferred in different schools from 5.9.1991 onwards, but ultimately was posted at Jawahar Secondary School, Bhinasar on 20.7.1993 where NCC institution was available. The petitioner was kept on supernumarary list for two years, because during this intermittent period where-ever he was posted the NCC Institution was not available. But at Bhinasar after joining petitioner made representation to the respondents but without any result. As per NCC Act, 1948, the petitioner was kept on supernumarary list for two years. On the basis of these Rules he

made an application to the Principal of the School to give charge as 2nd Officer from Shri K.C.Joshi – the respondent No.5, who was at relevant time was having the charge of 2nd Officer. The Commanding Officer of the NCC ordered that charge to be handed over to petitioner and recommended his case to the respondent No.2 for consideration. The respondents after due deliberation rejected his application. As per Sub-Rule 4(a) and 4 (aa) of Rule 26, as he was on supernumarary list, he again made representation but without any result. Hence petitioner filed this writ petition for quashing of the order dated 1.10.1993 and for direction to absorb him as Associated NCC Officer in NCC.

The respondents No.1 to 4 filed reply stating inter alia that sub-rule 4(a) and 4(aa) of Rule 26 clearly prescribes that officer of the NCC of the senior and junior divisions who proceed on long leave or posted away to perform some other duties and are permitted to keep lien with their school/college shall be placed on supernumerary list for a period not exceeding 2 yearsunless the government in the special case agrees to extent it. Sub-rule 4(aa) clearly provides that where an officer of the NCC is transferred to a college or school having no vacancy in the unit to absorb him as a junior-most amongst the officers, junior to him if in any such college or school, shall be placed on supernumerary list for a period not exceeding one year at the discretion of the Director General, NCC. In case there is no such

junior officer to be placed on the supernumerary list or where the transfer is to a college or a school having no unit to transferred officer, shall be placed on the supernumerary list for a period not exceeding one year at the discretion of the Director General, N.D.C. In view of these provisions of law, petitioner was not entitled to have extension from 5.9.92 to 4.9.93 and his fresh request for extension was rightly turned down. The petitioner has no legal right which can be enforced by way of a writ petition.

Heard learned counsel for the parties. Documents were perused.

There is no dispute about the factual aspect of the matter. The learned counsel pleaded that since after transfer from the school from 5.9.91 to 20.7.93, the period for which he was kept on supernumerary list and when he joined at Bhinasar, there was no NCC institution. As per supernumerary list he was entitled to hold the charge of 2nd officer of the NCC of the School, but the same has been turned down by the Director General without giving him any opportunity of hearing and against the rules. This argument of the learned counsel for the petitioner is devoid of any merit. Sub-rule 4(aa) specifically mentions that a transferred officer will be placed on supernumerary list for a period not exceeding one year at the discretion of the Director General, NCC. The period of supernumerary list has already

expired long before one year.

The Director General rightly considered his case and not retained him in the supernumerary list. There is no illegality or irregularity in passing the order.

More-so, Rule 22 of the said Act specifically provides that a person commissioned in the NCC shall hold that commission as an officer in that corps for a total period not exceeding 15 years or until he reached 50 years age. Learned counsel for the petitioner agreed that petitioner has already crossed the age of 50 years and now he cannot be retained as 2nd Officer in the NCC Unit as he has crossed the required age to be retained in the NCC.

Resultantly, there is no force in the writ petition and same deserves to be dismissed.

The writ petition stands dismissed. No order as to cost.

(BHANWAROO KHAN)J.

BKS/-